

APPEAL NO. 041781  
FILED SEPTEMBER 8, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 7, 2004, with the record closing on June 23, 2004. The hearing officer resolved the disputed issues before him by determining that: (1) the compensable injury of \_\_\_\_\_, does not include left shoulder impingement syndrome or lumbosacral radiculopathy; and (2) appellant (claimant) did not have disability resulting from the compensable injury of \_\_\_\_\_. Claimant timely appeals, asserting she timely responded to the hearing officer's 10-day letter and seeks reversal and a remand for a hearing at which claimant will present evidence on the merits. Respondent (carrier) asserts the decision is affirmable on the facts and that claimant's appeal fails to meet the requirements of Section 410.202(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a) (Rule 143.3(a)).

DECISION

We reverse and remand.

We have reviewed claimant's appeal and it is sufficient to invoke the Appeals Panel's jurisdiction. In this case, a hearing was held on June 7, 2004, and claimant failed to appear. The hearing officer sent claimant a 10-day letter dated June 7, 2004, stating that she could contact the Texas Workers' Compensation Commission (Commission) within 10 days to request that a hearing be reconvened to permit her to present evidence on the issues and show good cause for her failure to attend the hearing. Attached to claimant's appeal is a letter from claimant stating that she was unable to attend the June 7, 2004, hearing and that she wished to pursue her case. The letter was stamped received by the Commission on June 11, 2004, which was within the 10-day period. The hearing officer signed a decision and order on June 23, 2004, which said that claimant had failed to respond to the 10-day letter. The hearing officer apparently determined that claimant did not meet her burden of proof on the merits of the issues before him and determined the issues in carrier's favor.

The letter attached to claimant's appeal, which was not admitted at the hearing, meets the requirements for consideration for the first time on appeal. See Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.- Dallas 1988, no writ). We must remand this case for the hearing officer to consider this letter and make findings of fact regarding whether the letter was received by the Commission within the 10-day period. The hearing officer should provide claimant an opportunity to show good cause for her failure to attend the June 7, 2004, hearing and for the presentation of evidence on the merits of the issues by both parties. We reverse the hearing officer's decision and order and we remand for further proceedings consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

According to information provided by carrier, the true corporate name of the insurance carrier is **SECURITY INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge